

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2831 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy
of the judgement?
 4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
3 to 5 No

SOLANKI CHIMANBHAI NANABHAI

Versus

COMPETENT AUTHORITY AND ADDL COLLECTOR ULC

Appearance:

MR MC BHATT for Petitioners

Mr. UA Trivedi, AGP for Respondents

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 02/09/98

ORAL JUDGEMENT

1. Rule. Mr. U.A. Trivedi, learned AGP waives
service of rule.

2. Heard learned counsel for the petitioner. The
petitioner challenges the order of the competent officer

under Urban Land Ceiling Act determining surplus vacant lands held by Nanabhai Bhaktabhai, father of the

petitioner on the basis of declaration filed by him vide order dated 21.9.84; and petitioners appeal against which has been dismissed vide order dated 27th February, 1998.

3. The petition is liable to succeed on a short issue. The facts relevant for the present purposes are taken into consideration. The dispute is about considering the number of units entitled in respect of holdings determined in the case of Bhaktabhai Nanabhai Solanki. The petitioner alleges himself to be major son as on the relevant date as well as he also claims that the property to be of Hindu Undivided family in which he has the independent interest. Against the order dated 21.9.1984, Nanabhai has appealed. The petitioners are son and pre-deceased son's widow of said Nanabhai. They also filed separate appeal against the order dated 21.9.1984 in respect of the determination of the unit entitlement. The appeal of Nanabhai came to be decided independently on 28th March, 1992 and the same was dismissed. The petitioner's appeal has been admitted after condoning the delay. However, thereafter appeal has been rejected solely on the ground that as the decision in appeal filed by Nanabhai exists, there is an estoppel against taking any other view in the appeal filed by the appellants in the case, hence merits of his contention are not required to be examined.

4. Thus without examining the merits of the appellants case, appeal has been dismissed.

5. There appears to be error apparent in arriving at this conclusion. Under Section 33 of the ULC Act independent rights have been conferred on every person aggrieved to file an appeal. The holder of the land as well as any person entitled to the unit independently under the provision of the ULC Act are certainly interested in the proceedings and in case their rights are affected, can be termed as aggrieved persons. It was in recognition of this interest that appeal of the petitioner was entertained. They also have an independent right to file appeal. Once the independent right of appeal is accepted to exist in favour of appellants, their right of independent hearing and decision thereon are consequential. The authority cannot

deny independent consideration solely on the ground that in another appeal he has taken some view. He may come to same conclusion otherwise. But consideration on merit cannot be denied on the ground of estoppel. The appeal has been rejected on the ground that a decision has been taken in Nanbhai's case, which acts as an estoppel for the deciding authority so as to considering the appeal on merit. That would be denying the independent right of the appellants without hearing.

6. The petition succeeds on this ground alone. The Order at Annexure-E dated 27.2.1998 of the Appellate Tribunal is set aside and the Appellate Tribunal is directed to decide the appeal of the appellants in accordance with law. Rule made absolute accordingly. No order as to costs.

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